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UNITED STATES DISTRICT COURT
CLARK COUNTY, NEVADA

VS TECHNOLOGIES, LLC, d/b/a
COBALT DATA CENTERS,

Plaintiff,

v.

SWITCH, LTD., a Nevada limited company;
SWITCH BUSINESS SOLUTIONS, LLC, a Nevada
limited liability company; SWITCH
COMMUNICATIONS GROUP, LLC, a Nevada
limited liability company; SWITCH, INC., a Nevada
corporation.

Defendants.

Case No.: 2:17-cv-02349-KJD-NJK

**DEFENDANTS' MOTION TO
QUASH OR MODIFY SUBPOENAS**

1. Introduction.

Defendants Switch, Ltd., et al ("Switch"), by and through their counsel of record, Hutchison & Steffen, PLLC, respectfully request that the Court quash or modify the subpoenas served on several of Switch's clients, vendors, and members of Switch's Board by Plaintiff V5 Technologies, LLC, d/b/a Cobalt Data Centers ("Cobalt"). Switch objects to the subpoenas because most of the subpoenaed information is in the possession of the parties to this litigation. Therefore, there is no legitimate basis for breadth and scope of the subpoenas. Proceeding in this manner, Cobalt is causing undue expense on the third parties in violation of FRCP

1 45(d)(1). Additionally, it results in strain on Switch's relationship with these parties.

2 In other instances, the requests seek documents protected by the Stipulated Protective
3 Order agreed to by the parties, and, as such, could result in unprotected copies of documents in
4 Switch's possession entering into the public record. Switch has asked Cobalt to confirm in
5 writing that Cobalt will not disseminate any documents received under the subpoenas to
6 anyone, including client representatives, until Switch can review the documents and place a
7 proper designation on such documents as may be needed under the Stipulated Protective Order
8 in this case. To the extent that Cobalt confirms this in writing, that is helpful in assuaging
9 Switch's concerns in this regard. However, given the imminent response deadline in the
10 subpoenas, Switch sees no alternative but to file the present motion at this time.

11 Switch is affected by these subpoenas, both for the reasons listed above and because of
12 the strain on Switch's relationship with many of the individuals and entities that were
13 subpoenaed. Cobalt has no legitimate reason to seek the volume and scope of documents from
14 the individuals and entities listed below, and as such Switch respectfully requests that the court
15 quash or modify these subpoenas.

16 **2. Factual Background.**

17 On May 29, 2018, Switch received notice from Cobalt that it had served subpoenas on
18 19 different individuals and entities. The subpoenaed parties consisted of Switch's clients,
19 vendors, and board members. The requests included in these subpoenas were generally
20 objectionable, requesting documents from these third parties that were either in the possession
21 of one or both of the parties to the litigation, that were overly burdensome or overbroad, or that
22 sought documents protected under the Stipulated Protective Order agreed to by the parties. It
23 is apparent from the tenor and timing of the subpoenas that they represent yet another attempt
24 from Cobalt to harass and annoy Switch, this time by targeting those with whom it has business
25 relationships.

26 Responses to the subpoenas were scheduled for June 20, 2018. Switch has reached out
27 to all of the subpoenaed parties to let them know that this Motion to Quash or Modify would be
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1 filed. Some of these parties have determined to file their own objections. Others, specifically
 2 Switch's board members, are being represented by Switch, who will be filing objections on
 3 their behalf.

4 **3. Legal Standard.**

5 FRCP 45(d)(3) lays out the requirements for quashing or modifying a subpoena. A
 6 federal court is required to quash or modify a subpoena that "subjects a person to undue
 7 burden."¹ The court may also quash a subpoena "to protect a person subject to or affected by a
 8 subpoena...if it requires disclosing a trade secret or other confidential research, development, or
 9 commercial information."² This Court has, in the past, held the following with regard to a
 10 party's moving to quash a subpoena served on a third party:

- 11 1. *A party may move to quash a third party subpoena if it has a specific interest in the*
 12 *documents requested.* "In general, a party has no standing to move to quash a subpoena
 13 served upon a third party *unless the party claims a personal right or privilege with respect*
 14 *to the documents requested in the subpoena.*"³ Thus, a party may move to quash a subpoena
 15 which seeks documents in which the moving party has a "personal right or privilege."
- 16 2. *A party may move to quash a third party subpoena if the subpoena will cause an undue*
 17 *burden for the party itself.* "A party lacks standing to quash a subpoena on grounds that it
 18 is overbroad or unduly burdensome *on a third party.*"⁴ However, there is no restriction on
 19 standing if a party seeks to quash a third-party subpoena because it will cause an undue
 20 burden on the party itself. Indeed, courts *must* quash or modify a subpoena if it "subjects *a*
 21 *person* to an undue burden."⁵ FRCP 45 does not limit the burdened person to the individual

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 23 ¹ FRCP 45(d)(3)(A)(iv).

24 ² FRCP 45(d)(3)(B).

25 ³ *Dale Evans Parkway 2012, LLC v. Nat'l Fire & Marine Ins. Co.*, No. EDCV15979JGBSPX,
 26 2016 WL 7486606, at *3 (C.D. Cal. Oct. 27, 2016).

27 ⁴ *Id.*

28 ⁵ Fed. R. Civ. P. 45(d)(3)(A)(iv)

1 or entity that is subject to the subpoena. Of course, “[t]he party that moves to quash a
2 subpoena has the burden of persuasion,”⁶ meaning that it must clearly demonstrate the
3 burden that the subpoena will create.

4 3. ***Subpoenas cannot be used to circumvent other methods of discovery.*** The primary method
5 of discovery is, of course, written discovery between the parties. Therefore, “[t]he court
6 also has an obligation to protect non-parties from being burdened with subpoenas for
7 documents that can more easily and inexpensively be obtained from the opposing party.”⁷

8 **4. Legal Argument.**

9 **A. Cobalt’s Subpoenas are unnecessarily duplicative and create an undue burden on** 10 **Switch and the responding parties.**

11 As a result of Cobalt’s subpoenas, Switch is both an entity that is being subjected to an
12 undue burden and, with regard to trade secret and other documents, a party “affected” by the
13 subpoena. Switch therefore is in a position to move this court to quash these subpoenas, and
14 through this Motion does so.

15 Cobalt’s subpoenas are inappropriate, and should be quashed by this court for several
16 reasons. The primary reason that the subpoenas should be quashed is their unnecessary
17 duplicativeness—many of the documents requested in the subpoenas are *clearly* in the
18 possession of either Cobalt or Switch. As this court has held in the past, it “has an obligation to
19 protect non-parties from being burdened with subpoenas for documents that can more easily and
20 inexpensively be obtained from the opposing party.”⁸ Since these documents will *necessarily* be
21 produced by one or both parties during the regular course of discovery, the requests represent an
22 unnecessary burden on the responding parties. Since these documents will *necessarily* be

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25 ⁶ *Dinkins v. Schinzel*, No. 217CV01089JADGWF, 2017 WL 4183115, at *1 (D. Nev. Sept. 19,
2017)

26 ⁷ *McCall v. State Farm Mut. Auto. Ins. Co.*, No. 216CV01058JADGWF, 2017 WL 3174914, at
27 *6 (D. Nev. July 26, 2017)

28 ⁸ *Id.*

1 produced by one or both parties during the regular course of discovery, the requests represent an
2 unnecessary burden on the responding parties.

3 Moreover, the document categories in Cobalt's subpoenas are duplicative to Requests
4 for Production made by Cobalt to Switch. Switch has already spent considerable time and
5 money beginning the search for these documents; to request these identical documents from
6 Switch's clients and vendors is unnecessary and burdensome for every party involved. Cobalt's
7 requests show essentially no efforts to minimize the burden placed on the parties responding to
8 the subpoenas. For example, many of the subpoenas include the following request: "All
9 documents concerning Cobalt and/or Cobalt Cheyenne, including without limitation *all*
10 *communications concerning Cobalt and/or Cobalt Cheyenne.*" While this request is obviously
11 extremely broad on its face, more important is the fact that *every single communication with*
12 *Cobalt* will necessarily be included in this category, meaning that Cobalt is seeking documents
13 of which it is very clearly in possession.

14 The fact that these requests are unduly burdensome to the responding parties will also
15 cause an undue burden to devolve upon Switch, as Switch's relationship with the responding
16 parties (many of them longtime customers and/or vendors of Switch) will necessarily deteriorate
17 as a result of the burden placed on the responding parties by Cobalt's requests. Already
18 subpoenaed parties have contacted Switch and expressed their frustration with these subpoenas.
19 One subpoenaed party, NetEffect, specifically requested that Switch pay its legal fees.⁹

20 The requests made by Cobalt in their subpoenas are also significantly overbroad. It is
21 true that a final determination from the court regarding the time period of the relevant discovery
22 period in this case is still pending. However, it is nevertheless unreasonable for Cobalt to ask
23 parties that are, at best, tangentially related to this litigation to dig through emails and
24 documents from the past seven and a half years to find information responsive to a dozen or
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27 ⁹ See Email Correspondence between Jeffrey Hall, Sam Castor, Jeff Grace, and David Rounds,
28 attached as **Exhibit A**.

1 more generally overbroad and objectionable requests. The specific requests that are overbroad
2 in their scope are laid out in additional detail *infra*. In *Moon v. SCP Pool Corp.*, a California
3 case frequently cited by this Court, the Central District Court of California noted that certain
4 subpoena requests were “overbroad on [their] face and exceed[] the bounds of fair discovery”
5 in that they sought “information over a ten year or greater period” and sought overly generalized
6 information.¹⁰ The principle is the same, namely that the breadth of these requests is simply
7 unreasonable. The *Moon* court further explained that many of these requested documents could
8 more easily be obtained from the opposing party in the litigation, which is the same issue facing
9 the parties in this case. The overly broad nature of the requests contained in the subpoenas
10 served by Cobalt also creates an undue burden for Switch as the unfair and overwhelming
11 amount of work that will have to be done by the responding parties will certainly place a strain
12 on their relationship with Switch.

13 Beyond the duplicativeness and overbreadth of the subpoenas, they are also written in
14 such a way as to allow Cobalt to avoid the terms of the parties’ Stipulated Protective Order.
15 Many of Cobalt’s subpoenas seek documents from third parties that fall within the purview of
16 the Protective Order signed by both parties. These documents include highly confidential
17 technical information, trade secret information, the public dissemination of which may be
18 harmful to Switch, as well as other sensitive documents. Any documents that are produced by
19 the responding parties are unlikely to be produced in accordance with the terms of the
20 Stipulated Protective Order. Pursuant to the protective order, highly confidential information
21 has been and will be redacted from Switch’s productions. Responses to these subpoenas will
22 include highly confidential information that was redacted from Switch’s production. As has
23 been mentioned several times in the past, Cobalt has clearly entered this litigation with the
24 intent to harass and annoy Switch, likely with the hope that Switch will give in and provide
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26 ¹⁰ *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005)
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1 Cobalt with an early “nuisance” settlement rather than suffer the burdens associated with such
 2 an unreasonable and invasive litigation style. It would suit Cobalt’s goals to have these third
 3 parties unwittingly produce Switch’s sensitive information without the protection of the
 4 protective order.

5 *i. The Subpoenaed Parties.*

6 Cobalt has served subpoenas on each of the individuals or entities listed below. For the
 7 general reasons set forth above, as well as the specific reasons listed below, these subpoenas are
 8 inappropriate, and Switch moves that this court quash them.

9 **Nicole Folino.** Ms. Folino is a Regional Vice President at Sandler Partners and is the
 10 wife of Joe Folino, Vice President of Connectivity at Switch. Ms. Folino was conflict checked
 11 prior to any retention Sandler Partners has brokered with regard to telecommunication and
 12 colocation deals for Switch. Cobalt has made no factual allegations or legal claims against
 13 Switch regarding Sandler Partners or Ms. Folino, and therefore their inclusion in the subpoena
 14 process is wholly inappropriate. The requests themselves are also specifically objectionable in
 15 the following ways:

- 16 • **Requests No. 1 through 10** all seek documents that would almost
 17 certainly be in the possession of one or both of the parties to this
 18 litigation, and therefore will be produced during the regular course of
 19 discovery. The requests are therefore unduly burdensome to the
 20 responding party and, as a result, unduly burdensome to Switch.
- 21 • **Requests No. 2, 4, 5, 8, 9, 10, and 11** seek documents that are
 22 confidential in nature. Specifically, they seek trade-secret documentation
 23 regarding agreements made between Sandler Partners and/or Ms. Folino
 24 and Switch, information from Switch’s policies and procedures, Switch’s
 25 pricing, and other sensitive information regarding Switch. The subpoena
 26 makes no provision for the production of responsive documents pursuant
 27 to the parties’ Stipulated Protective Order, and therefore will result in the
 28 unprotected production of these sensitive documents.
- **Requests No. 11 and 12** are extremely vague, and will require the
 respondent to perform an undue amount of labor to determine what, if
 any, documents are responsive to these requests. This burden will likely
 have a negative impact on the relationship Ms. Folino and Sandler
 Partners have with Switch. Furthermore, these requests are not a request

1 for specific documents, but rather a fishing expedition: Cobalt is seeking
 2 to gain generic information regarding colocation data center customers
 3 and their preferences. The responding party has no responsibility to
 4 provide Cobalt with this type of generic information that is not
 specifically related to any of the claims associated with this case, and
 should not be required to do so.

5 **Cannery Casino.** The Cannery Casino is a customer of Switch. All of the factual
 6 allegations and legal claims made by Cobalt regarding Cannery Casino involve Switch's alleged
 7 refusal to allow third parties to work with Cobalt. Any requests that fall outside of that scope
 8 are excessive and should be disallowed. The requests themselves are also specifically
 9 objectionable in the following ways:

- 10 • **Requests No. 1 through 11** all seek documents that would almost
 11 certainly be in the possession of one or both of the parties to this
 12 litigation, and therefore will be produced during the regular course of
 discovery. The requests are therefore unduly burdensome to the
 13 responding party and, as a result, unduly burdensome to Switch.
- 14 • **Requests No. 5 through 9** seek documents that are confidential in
 15 nature. Specifically, they seek trade-secret documentation regarding
 16 agreements made between Cannery Casino and Switch, information from
 17 Switch's policies and procedures, Switch's pricing, and other sensitive
 information regarding Switch. The subpoena makes no provision for the
 18 production of responsive documents pursuant to the parties' Stipulated
 Protective Order, and therefore will result in the unprotected production
 of these sensitive documents.
- 19 • **Requests No. 11 and 12** are extremely vague, and will require the
 20 respondent to perform an undue amount of labor to determine what, if
 21 any, documents are responsive to these requests. This burden will likely
 22 have a negative impact on the relationship Cannery Casino has with
 Switch. Furthermore, these requests clearly amount to a fishing
 23 expedition: Cobalt is seeking to gain generic information regarding
 colocation data center customers. The responding party has no
 24 responsibility to provide Cobalt with this generic information that is not
 specifically related to any of the claims associated with this case, and
 should not be required to do so.

25 **CenturyLink.** CenturyLink and Switch have a long history of doing business together,
 26 as CenturyLink is one of the providers of internet and other digital services relied on by many in
 27 the Las Vegas valley. All of the factual allegations and legal claims made by Cobalt regarding
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CenturyLink deal with Switch's alleged refusal to allow third parties to work with Cobalt. Any requests that fall outside of that scope are excessive and should be disallowed. The requests themselves are also specifically objectionable in the following ways:

- **Requests No. 1 through 13** all seek documents that would almost certainly be in the possession of one or both of the parties to this litigation, and therefore will be produced during the regular course of discovery. The requests are therefore unduly burdensome to the responding party and, as a result, unduly burdensome to Switch.
- **Requests No. 1 through 6 and 11 through 13** seek documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between CenturyLink and Switch, information from Switch's policies and procedures, Switch's pricing, and other sensitive information regarding Switch. The subpoena makes no provision for the production of responsive documents pursuant to the parties' Stipulated Protective Order, and therefore will result in the unprotected production of these sensitive documents.
- **Requests No. 9 through 11 and 14** are extremely vague, and will require the respondent to perform an undue amount of labor to determine what, if any, documents are responsive to these requests. This burden will likely have a negative impact on the relationship CenturyLink has with Switch.

Defense Advanced Research Projects ("DARPA"). DARPA is a Switch customer.

All of the factual allegations and legal claims made by Cobalt regarding DARPA concern DARPA's decision to change the requirements to obtain a specific government contract. Cobalt admits in its Complaint that this decision was made by DARPA itself. As such, any requests that fall outside of that scope are excessive and should be disallowed. The requests themselves are also specifically objectionable in the following ways:

- **Requests No. 1 and 2¹¹** both seek, at least in part, documents that would almost certainly be in the possession of one or both of the parties to this litigation, and therefore will be produced during the regular course of discovery. The requests are therefore unduly burdensome to the responding party and, as a result, unduly burdensome to Switch.

¹¹ A numbering error resulted in Cobalt's two requests to DARPA being labelled as Request No. 15 and 16. The correct numbering is included here for the sake of clarity.

- **Request No. 2** seeks documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between DARPA and Switch and Switch's pricing. The subpoena makes no provision for the production of responsive documents pursuant to the parties' Stipulated Protective Order, and therefore will result in the unprotected production of these sensitive documents.

LV Global Econ Alliance ("LV GEA"). Switch sponsored LVGEA's marketing, branding, and special events. In addition, Switch donated approximately \$1,000,000 in free office and event space to LVGEA to assist in attracting business to Las Vegas. Cobalt has made no factual allegations or legal claims against Switch regarding LV GEA, and therefore its inclusion in the subpoena process is wholly inappropriate. The requests themselves are also specifically objectionable in the following ways:

- **Requests No. 1 through 5 and 8 through 10** all seek documents that would almost certainly be in the possession of one or both of the parties to this litigation, and therefore will be produced during the regular course of discovery. The requests are therefore unduly burdensome to the responding party and, as a result, unduly burdensome to Switch.
- **Requests No. 1 through 5 and 8** seek documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between LV GEA and Switch, Switch's pricing, and other sensitive information regarding Switch. The subpoena makes no provision for the production of responsive documents pursuant to the parties' Stipulated Protective Order, and therefore will result in the unprotected production of these sensitive documents.
- **Requests No. 5 through 10** are extremely vague, and will require the respondent to perform an undue amount of labor to determine what, if any, documents are responsive to these requests. This burden will likely have a negative impact on the relationship LV GEA has with Switch. Furthermore, several of these requests clearly amount to a fishing expedition: Cobalt is seeking to gain generic information regarding any and all colocation data centers with ties to LV GEA. The responding party has no responsibility to provide Cobalt with this generic information that is not specifically related to any of the claims associated with this case, and should not be required to do so.

Meruelo Group, LLC ("Meruelo"). To the best of Switch's knowledge, there is no relationship between the Meruelo Group and Switch. Cobalt has made no factual allegations or

1 legal claims against Switch regarding Meruelo, and therefore its inclusion in the subpoena
 2 process is wholly inappropriate. The requests themselves are also specifically objectionable in
 3 the following ways:

- 4 • **Requests No. 1 through 12** all seek, at least in part, documents that
 5 would almost certainly be in the possession of one or both of the parties
 6 to this litigation, and therefore will be produced during the regular course
 7 of discovery. The requests are therefore unduly burdensome to the
 8 responding party and, as a result, unduly burdensome to Switch.
- 9 • **Requests No. 5 through 12** seek documents that are confidential in
 10 nature. Specifically, they seek trade-secret documentation regarding
 11 agreements made between Meruelo and Switch, information from
 12 Switch's policies and procedures, Switch's pricing, and other sensitive
 13 information regarding Switch. The subpoena makes no provision for the
 14 production of responsive documents pursuant to the parties' Stipulated
 15 Protective Order, and therefore will result in the unprotected production
 16 of these sensitive documents.
- 17 • **Requests No. 1 through 6 and 13 through 15** are extremely vague, and
 18 will require the respondent to perform an undue amount of labor to
 19 determine what, if any, documents are responsive to these requests. This
 20 burden will likely have a negative impact on the relationship Meruelo has
 21 with Switch. Furthermore, several of these requests clearly amount to a
 22 fishing expedition: Cobalt is seeking to gain generic information
 23 regarding colocation data center customers. The responding party has no
 24 responsibility to provide Cobalt with this generic information that is not
 25 specifically related to any of the claims associated with this case, and
 26 should not be required to do so.

27 **NetEffect.** NetEffect is a customer of Switch. Cobalt has made no factual allegations
 28 or legal claims against Switch regarding NetEffect, and therefore its inclusion in the subpoena
 process is wholly inappropriate. In fact, NetEffect has raised specific concerns regarding the
 scope of the subpoena and the subpoena is affecting the business relationship between Switch
 and NetEffect. The requests themselves are also specifically objectionable in the following
 ways:

- **Requests No. 1 through 9** all seek, at least in part, documents that would
 almost certainly be in the possession of one or both of the parties to this
 litigation, and therefore will be produced during the regular course of
 discovery. The requests are therefore unduly burdensome to the
 responding party and, as a result, unduly burdensome to Switch.

- **Requests No. 4, 5, 8, and 9** seek documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between NetEffect and Switch, information from Switch's policies and procedures, Switch's pricing, and other sensitive information regarding Switch. The subpoena makes no provision for the production of responsive documents pursuant to the parties' Stipulated Protective Order, and therefore will result in the unprotected production of these sensitive documents.
- **Requests No. 1, 4, and 6 through 12** are extremely vague, and will require the respondent to perform an undue amount of labor to determine what, if any, documents are responsive to these requests. This burden will likely have a negative impact on the relationship NetEffect has with Switch. Furthermore, several of these requests clearly amount to a fishing expedition: Cobalt is seeking to gain generic information regarding colocation data center customers. The responding party has no responsibility to provide Cobalt with this generic information that is not specifically related to any of the claims associated with this case, and should not be required to do so.

Networx Systems. Networx is a Switch Vendor. All of the factual allegations and legal claims made by Cobalt regarding Networx have to do with Switch's alleged offer to pay Networx's defense costs and legal fees if it agreed to break its contract with Cobalt. Any requests that fall outside of that scope are excessive and should be disallowed. The requests themselves are also specifically objectionable in the following ways:

- **Requests No. 1 through 11** all seek documents that would almost certainly be in the possession of one or both of the parties to this litigation, and therefore will be produced during the regular course of discovery. The requests are therefore unduly burdensome to the responding party and, as a result, unduly burdensome to Switch.
- **Requests No. 2 and 5 through 11** seek documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between Networx and Switch, information from Switch's policies and procedures, Switch's pricing, and other sensitive information regarding Switch. The subpoena makes no provision for the production of responsive documents pursuant to the parties' Stipulated Protective Order, and therefore will result in the unprotected production of these sensitive documents.

- **Requests No. 1 through 4, 6, and 9 through 14** are extremely vague, and will require the respondent to perform an undue amount of labor to determine what, if any, documents are responsive to these requests. This burden will likely have a negative impact on the relationship Networkx has with Switch. Furthermore, several of these requests clearly amount to a fishing expedition: Cobalt is seeking to gain generic information regarding colocation data center customers. The responding party has no responsibility to provide Cobalt with this generic information that is not specifically related to any of the claims associated with this case, and should not be required to do so.

Nevada Property1 (“Property1”). Nevada Property1 is the owner and operator of the Cosmopolitan Resort. Cosmopolitan Resorts was a former customer of Switch. Cobalt has made no factual allegations or legal claims against Switch regarding Property1, and therefore its inclusion in the subpoena process is wholly inappropriate. The requests themselves are also specifically objectionable in the following ways:

- **Requests No. 1, 2, and 4 through 11** all seek documents that would almost certainly be in the possession of one or both of the parties to this litigation, and therefore will be produced during the regular course of discovery. The requests are therefore unduly burdensome to the responding party and, as a result, unduly burdensome to Switch.
- **Requests No. 4 through 11** seek documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between Property1 and Switch, information from Switch’s policies and procedures, Switch’s pricing, and other sensitive information regarding Switch. The subpoena makes no provision for the production of responsive documents pursuant to the parties’ Stipulated Protective Order, and therefore will result in the unprotected production of these sensitive documents.
- **Requests No. 1, 2, and 4 through 14** are extremely vague, and will require the respondent to perform an undue amount of labor to determine what, if any, documents are responsive to these requests. This burden will likely have a negative impact on the relationship Property1 has with Switch. Furthermore, several of these requests clearly amount to a fishing expedition: Cobalt is seeking to gain generic information regarding colocation data center customers. The responding party has no responsibility to provide Cobalt with this generic information that is not specifically related to any of the claims associated with this case, and should not be required to do so.

Opportunity Village. Opportunity Village is a philanthropic entity and a Switch customer. A Switch executive served on the board and Switch have been donating its services to show its support to the organizations. It is our understanding that Cobalt wished to charge Opportunity Village for these same services. All of the factual allegations and legal claims made by Cobalt regarding Opportunity Village have to do with the entirely unsupported allegation that a member of Switch's board influenced Opportunity Village to terminate its relationship with Cobalt. Any requests that fall outside of that scope are excessive and should be disallowed. The requests themselves are also specifically objectionable in the following ways:

- **Requests No. 1 through 11 and 15** all seek documents that would almost certainly be in the possession of one or both of the parties to this litigation, and therefore will be produced during the regular course of discovery. The requests are therefore unduly burdensome to the responding party and, as a result, unduly burdensome to Switch.
- **Requests No. 2 and 5 through 11** seek documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between Opportunity Village and Switch, information from Switch's policies and procedures, Switch's pricing, and other sensitive information regarding Switch. The subpoena makes no provision for the production of responsive documents pursuant to the parties' Stipulated Protective Order, and therefore will result in the unprotected production of these sensitive documents.
- **Requests No. 1 through 14** are extremely vague, and will require the respondent to perform an undue amount of labor to determine what, if any, documents are responsive to these requests. This burden will likely have a negative impact on the relationship Opportunity Village has with Switch. Furthermore, several of these requests clearly amount to a fishing expedition: Cobalt is seeking to gain generic information regarding colocation data center customers. The responding party has no responsibility to provide Cobalt with this generic information that is not specifically related to any of the claims associated with this case, and should not be required to do so.

Sandler Partners. As indicated above, Sandler Partners has brokered telecommunication and colocation deals for Switch. Cobalt has made no factual allegations or legal claims against Switch regarding Sandler Partners, and therefore its inclusion in the

subpoena process is wholly inappropriate. The requests themselves are also specifically objectionable in the following ways:

- **Requests No. 1 through 9** all seek documents that would almost certainly be in the possession of one or both of the parties to this litigation, and therefore will be produced during the regular course of discovery. The requests are therefore unduly burdensome to the responding party and, as a result, unduly burdensome to Switch.
- **Requests No. 2, 4, 5, 8, and 9** seek documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between Sandler Partners and Switch, information from Switch's policies and procedures, Switch's pricing, and other sensitive information regarding Switch. The subpoena makes no provision for the production of responsive documents pursuant to the parties' Stipulated Protective Order, and therefore will result in the unprotected production of these sensitive documents.
- **Requests No. 10 through 12** are extremely vague, and will require the respondent to perform an undue amount of labor to determine what, if any, documents are responsive to these requests. This burden will likely have a negative impact on the relationship Sandler Partners has with Switch. Furthermore, several of these requests clearly amount to a fishing expedition: Cobalt is seeking to gain generic information regarding colocation data center customers. The responding party has no responsibility to provide Cobalt with this generic information that is not specifically related to any of the claims associated with this case, and should not be required to do so.

Silverback. Silverback is a vendor for Switch customers and assists Switch customers in migrating services to Switch facilities. All of the factual allegations and legal claims made by Cobalt regarding Silverback have to do with the entirely unsupported allegation that Switch founder Rob Roy influenced Silverback to cancel its relationship with Cobalt. Any requests that fall outside of that scope are excessive and should be disallowed. The requests themselves are also specifically objectionable in the following ways:

- **Requests No. 1 through 10** all seek documents that would almost certainly be in the possession of one or both of the parties to this litigation, and therefore will be produced during the regular course of discovery. The requests are therefore unduly burdensome to the responding party and, as a result, unduly burdensome to Switch.

- **Requests No. 2, 5, 6, 9, and 10** seek documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between Silverback and Switch, information from Switch's policies and procedures, Switch's pricing, and other sensitive information regarding Switch. The subpoena makes no provision for the production of responsive documents pursuant to the parties' Stipulated Protective Order, and therefore will result in the unprotected production of these sensitive documents.
- **Requests No. 11 through 12** are extremely vague, and will require the respondent to perform an undue amount of labor to determine what, if any, documents are responsive to these requests. This burden will likely have a negative impact on the relationship Silverback has with Switch. Furthermore, several of these requests clearly amount to a fishing expedition: Cobalt is seeking to gain generic information regarding colocation data center customers. The responding party has no responsibility to provide Cobalt with this generic information that is not specifically related to any of the claims associated with this case, and should not be required to do so.

Technology Business Alliance of NV ("TBAN"). When TBAN was still an operational entity, both Switch and TBAN worked toward increasing the profile of technology businesses in Nevada. TBAN is no longer an active entity. All of the factual allegations and legal claims made by Cobalt regarding TBAN have to do with the entirely unsupported allegation that Switch influenced TBAN to "exclude[] Cobalt's brokers" and to not allow Cobalt to sponsor TBAN events. Any requests that fall outside of that scope are excessive and should be disallowed. The requests themselves are also specifically objectionable in the following ways:

- **Requests No. 1 through 6** all seek documents that would almost certainly be in the possession of one or both of the parties to this litigation, and therefore will be produced during the regular course of discovery. The requests are therefore unduly burdensome to the responding party and, as a result, unduly burdensome to Switch.
- **Requests No. 2 and 6** seek documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between TBAN and Switch, information from Switch's policies and procedures, Switch's pricing, and other sensitive information regarding Switch. The subpoena makes no provision for the production of responsive documents pursuant to the parties' Stipulated Protective

Order, and therefore will result in the unprotected production of these sensitive documents.

- **Requests No. 7 and 8** are extremely vague, and will require the respondent to perform an undue amount of labor to determine what, if any, documents are responsive to these requests. These requests seek documentation regarding the positives of partnering with TBAN and the negatives of not partnering with TBAN. This essentially encompasses TBAN's entire marketing strategy, if not every document in TBAN's possession. If TBAN is required to produce all documents responsive to these requests, the burden will likely have a negative impact on the relationship TBAN has with Switch.

Zayo Group ("Zayo"). Zayo is a carrier who provides bandwidth and connectivity for Switch and Switch customers. All of the factual allegations and legal claims made by Cobalt regarding Zayo have to do with a pre-existing marketing relationship between Switch and Zayo. Any requests that fall outside of that scope are excessive and should be disallowed. The requests themselves are also specifically objectionable in the following ways:

- **Requests No. 1 through 11, 13, and 14** all seek documents that would almost certainly be in the possession of one or both of the parties to this litigation, and therefore will be produced during the regular course of discovery. The requests are therefore unduly burdensome to the responding party and, as a result, unduly burdensome to Switch.
- **Requests No. 2 through 6 and 13 through 15** seek documents that are confidential in nature. Specifically, they seek trade-secret documentation regarding agreements made between Zayo and Switch, information from Switch's policies and procedures, Switch's pricing, and other sensitive information regarding Switch. The subpoena makes no provision for the production of responsive documents pursuant to the parties' Stipulated Protective Order, and therefore will result in the unprotected production of these sensitive documents.
- **Requests No. 12 and 16** are extremely vague, and will require the respondent to perform an undue amount of labor to determine what, if any, documents are responsive to these requests. This burden will likely have a negative impact on the relationship Zayo has with Switch.

B. At the very least, Cobalt's Subpoenas should be modified with regard to their overbroad scope and their lack of deference to the parties' Stipulated Protective Order.

1 If this Court determines not to quash Cobalt's subpoenas in their entirety, it is clear that,
2 significant modifications of each of the subpoenas is absolutely necessary. First, each subpoena
3 should be modified to remove those requests that seek documents more easily obtained from
4 either Switch or Cobalt, such as communications and agreements with the parties. Second, the
5 unreasonable breadth of most of the requests should be limited, both with regard to time (Cobalt
6 is currently seeking seven years of documents) and scope (e.g. Cobalt's requests for "ALL
7 DOCUMENTS" regarding the generic search of "customers" for colocation data center
8 services).

9 Finally, some modification of *all* of the subpoenas must occur in order to bring *any*
10 documents produced in response thereto under the auspices of the Stipulated Protective Order.
11 As mentioned above, Cobalt simply attached the protective order to each of its subpoenas, but
12 made no other mention of it anywhere else in the text of the subpoenas. Cobalt provided no
13 instructions as to how the responding parties could comply with the protective order in their
14 production of responsive documents. Without modifying the subpoenas to include this
15 protection, Switch's sensitive, confidential, and trade-secret information will become part of the
16 public record. At the very least, then, Cobalt's subpoenas need to be significantly modified
17 before the responding parties can be required to produce documents in response thereto.

18 **5. Conclusion**

19 Cobalt began this litigation at a time calculated to cause the most significant disruption
20 to Switch: immediately prior to Switch's initial public offering. It is clear that Cobalt intended
21 to annoy and harass Switch to induce a nuisance settlement. Cobalt's overbroad and unduly
22 burdensome subpoenas to Switch's clients, vendors, and board members make it clear that
23 Cobalt intends to continue this method of litigation. Switch itself is at risk from these
24 subpoenas, both because of the undue burden that they will create with regard to Switch's
25 business relationships and with regard to the public dissemination of its sensitive documents.

26 ///

27 ///

1 For these reasons, Switch respectfully requests an order to quash or, at the very least, modify
2 the subpoenas at issue.

3 DATED this 20th day of June, 2018.

4
5 HUTCHISON & STEFFEN, LLC

6 */s/ Jeffrey R. Hall*

7 _____
8 Joseph S. Kistler (3458)
9 Jeffrey R. Hall (9572)
10 Peccole Professional Park
11 10080 West Alta Drive, Suite 200
12 Las Vegas, Nevada 89145
13 Phone (702) 385-2500
14 Fax (702) 385-2086
15 jkistler@hutchlegal.com
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17 *Attorneys for Defendants*
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25
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CERTIFICATE OF SERVICE

Pursuant to FED. R. CIV. P. 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 20th day of June, 2018 I caused the above and foregoing document entitled ***DEFENDANTS' MOTION TO QUASH OR MODIFY SUBPOENAS*** to be served as follows by personally transmitting a copy of same via the Court's CM/ECF Internet system to their respective registered email site.

/s/Danielle Kelley

An Employee of
Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY



EXHIBIT A

From: David B. Rounds <drounds@neteffect.com>
Sent: Wednesday, June 13, 2018 4:06 PM
To: Jeffrey Hall; Jeff Grace
Cc: sam@switch.com; abirk@switch.com
Subject: RE: Subpoena for Cobalt lawsuit

Mr. Hall and Mr. Castor,

Please respond with a copy of our contract with Switch. This has been requested previously through conversations with Mr. Castor. Please note the original contract should be listed under NetEffect Networks Inc, and potentially amended on or after July 1, 2014 due to our merger with then UptimeLV, Inc and NetEffect Networks Inc, to for NetEffect, LLC.

There are few items I think we should discuss:

1. Switch providing an amended contract for our services with Switch to provide MUTUAL identification against any further claims against Switch.
2. it is also worth mentioning that NetEffect, LLC is requesting reimbursement for any legal fees that will be incurred from responding to the Subpoena for the Cobalt lawsuit with Switch.
3. We are a small company in comparison to Switch, this will be a burdensome and costly process for us and believe that what we are asking for is both reasonable and fair.

Please keep us updated on any response to the letter you sent to the opposing counsel, and any motions to quash. We have spoken to our legal counsel and will be sending a letter in response to the subpoena to notify them we will be waiting for the result of your request/motion.

Best regards,

David B. Rounds | President
Voice: 702-318-7700, ext. 502
Email: drounds@neteffect.com
Support Requests: support@neteffect.com
375 E. WarmSprings Road, Suite 102
Las Vegas, NV 89119

Need an appointment with me? Click below to find an open slot, and then send me an invite!

<http://bit.ly/2dvZiLi>



From: Jeffrey Hall [mailto:JHall@hutchlegal.com]
Sent: Wednesday, June 13, 2018 1:25 PM
To: Jeff Grace <jgrace@neteffect.com>
Cc: David B. Rounds <drounds@neteffect.com>; sam@switch.com; abirk@switch.com
Subject: RE: Subpoena for Cobalt lawsuit

Jeff, thanks for taking the time to discuss this matter. Attached is the letter we sent to Cobalt's counsel. I also attached a copy of the subpoena for your convenience. Again, we will be filing a motion to quash or modify the subpoena.

Feel free to have your legal counsel give me a buzz if he/she wants to discuss. I'm also available if you have any further questions.

Thanks.

From: Jeff Grace [<mailto:jgrace@neteffect.com>]
Sent: Tuesday, June 12, 2018 5:59 PM
To: Jeffrey Hall <JHall@hutchlegal.com>
Cc: David B. Rounds <drounds@neteffect.com>; sam@switch.com; abirk@switch.com
Subject: RE: Subpoena for Cobalt lawsuit

Hi Jeff,

I'm Dave's partner, and can help in his absence this week. My contact info is below – please let me know how I can assist. I'm readily reachable by phone and email.

Regards,
Jeff

Jeff Grace | CEO
Voice: 702-318-7700, ext. 501
Email: jgrace@neteffect.com
Support Requests: support@neteffect.com
375 E. Warm Springs Road, Suite 102
Las Vegas, NV 89119



From: David B. Rounds
Sent: Tuesday, June 12, 2018 5:54 PM
To: Jeff Grace <jgrace@neteffect.com>
Subject: Fwd: Subpoena for Cobalt lawsuit

Please see what they need...

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Sam Castor <sam@switch.com>
Date: 6/12/18 11:44 AM (GMT-10:00)
To: "David B. Rounds" <drounds@neteffect.com>
Cc: Anne-Marie Birk <abirk@switch.com>, Jeffrey Hall <JHall@hutchlegal.com>
Subject: RE: Subpoena for Cobalt lawsuit

David,

I've copied Jeff Hall, our outside counsel. I understand you're on vacation, so please reach out to him as soon as you get this.

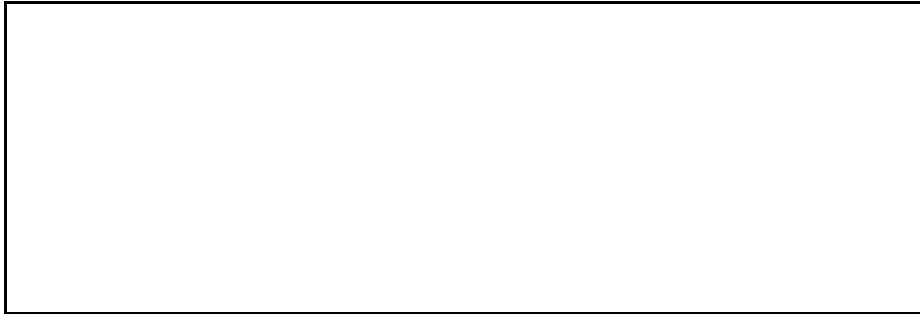


SAM CASTOR

EVP OF POLICY
DEPUTY GENERAL COUNSEL

o +1 (702) 444-4102
m +1 (702) 371-0724
e sam@switch.com
+ Switch e-card

We use e-cards to reduce waste of natural resources and promote sustainability.



From: Sam Castor
Sent: Wednesday, June 6, 2018 7:55 AM
To: David B. Rounds <drounds@neteffect.com>
Cc: Anne-Marie Birk <abirk@switch.com>
Subject: Re: Subpoena for Cobalt lawsuit

David,

I need to connect with outside counsel but as I mentioned, we are fully opposing the subpoenas and will do our best to contest the requests as we think they are duplicative and unduly burdensome. We are deeply sorrowed by opposing counsels tactics. We view these requests as designed to harass and annoy you and Switch. While we are using all efforts to fight this, please also feel free to secure your own legal advice.

Please excuse brevity and typos



SAM CASTOR

EVP OF POLICY
DEPUTY GENERAL COUNSEL

o +1 (702) 444-4102
m +1 (702) 371-0724
e sam@switch.com

On Jun 5, 2018, at 2:48 PM, David B. Rounds <drounds@neteffect.com> wrote:

Sam,

You were going to send me an email?

Best regards,

David B. Rounds | President

Voice: 702-318-7700, ext. 502

Email:drounds@neteffect.com

Support Requests:support@neteffect.com

375 E. Warm Springs Road, Suite 102

Las Vegas, NV 89119

Need an appointment with me? Click below to find an open slot, and then send me an invite!

<http://bit.ly/2dvZiLi>

<image001.png>

From: David B. Rounds

Sent: Thursday, May 31, 2018 4:55 PM

To: 'Sam@switch.com' <Sam@switch.com>

Subject: Subpoena for Cobalt lawsuit

Sam,

Please reach out to me ASAP regarding a Subpoena we received RE: Cobalt v Switch.

702.521.0980

Best regards,

David B. Rounds | President

Voice: 702-318-7700, ext. 502

Email:drounds@neteffect.com

Support Requests:support@neteffect.com

357 E. Warm Springs, Suite 102

Las Vegas, NV 89119

Need an appointment with me? Click below to find an open slot, and then send me an invite!

<http://bit.ly/2dvZiLi>

<image001.png>

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Jeffrey Hall
Partner



HUTCHISON & STEFFEN, PLLC
(702) 385-2500
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